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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

HECTOR GARCIA,

Plaintiff - Appellant,

v.

JOE MCGRATH; et al.,

Defendants - Appellees.

No. 07-16997

D.C. No. CV-05-04394-THE

MEMORANDUM<sup>\*</sup>

Appeal from the United States District Court  
for the Northern District of California  
Thelton E. Henderson, District Judge, Presiding

Submitted July 29, 2009<sup>\*\*</sup>

Before: WALLACE, LEAVY, and HAWKINS, Circuit Judges.

Hector Garcia, a California state prisoner, appeals pro se from the district court's summary judgment for defendants in his 42 U.S.C. § 1983 action alleging that prison officials subjected him to excessive force and were deliberately

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<sup>\*</sup> This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

<sup>\*\*</sup> The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

indifferent to his serious medical needs in violation of the Eighth Amendment. We have jurisdiction pursuant to 28 U.S.C. § 1291. We review de novo, *Toguchi v. Chung*, 391 F.3d 1051, 1056 (9th Cir. 2004), and we affirm.

The district court properly granted summary judgment on the excessive force claim because Garcia failed to raise a triable issue as to whether prison guards acted “maliciously and sadistically for the very purpose of causing harm” by using direct impact rounds and pepper spray after Garcia repeatedly refused to comply with orders to be handcuffed to facilitate his transfer to another prison cell. *See Hudson v. McMillian*, 503 U.S. 1, 6-7 (1992).

The district court properly granted summary judgment on the deliberate indifference to medical needs claim because Garcia’s dissatisfaction with the medical treatment that he received constituted, at most, a difference of medical opinion, which is insufficient to establish deliberate indifference. *See Toguchi*, 391 F.3d at 1058 (“[A] mere difference of medical opinion is insufficient, as a matter of law, to establish deliberate indifference.”) (internal quotation marks, ellipses, and brackets omitted).

**AFFIRMED.**